

**DATED**

21 January

2008  
~~2007~~

BROADLAND DISTRICT COUNCIL

-AND-

PETER RICHARD LILWALL and SUSAN JOY LILWALL

-AND-

THE AGRICULTURAL MORTGAGE CORPORATION LIMITED

PLC



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**AGREEMENT UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING  
ACT 1990**

Relating to the erection of farm office,  
staff facilities and Butchery  
at Jordan Green Farm Jordan Lane  
Whitwell Norfolk

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Broadland District Council  
Thorpe Lodge  
1 Yarmouth Road  
Thorpe St Andrew  
Norwich  
NR7 0DU

THIS AGREEMENT is made the 21<sup>st</sup> day of January 2007

*[Handwritten signature]*

- BETWEEN:
1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road  
Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council")
  2. PETER RICHARD LILWALL and SUSAN JOY LILWALL both of Jordan  
Green Farm Jordan Lane Whitwell Reepham Norfolk NR10 4RQ ("the  
Owners")
  3. THE AGRICULTURAL MORTGAGE CORPORATION ~~LIMITED~~ <sup>PLC</sup> whose office  
is at Charlton Place, Charlton Road, Andover, Hampshire, SP10 1RE ("the  
Mortgagee") *[Handwritten signature]*

1. INTERPRETATION AND DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Application"	the detailed application made on 17 April 2007 for planning permission for farm office, staff facilities and Butchery in accordance with the plans deposited with the Council bearing reference No 20070482
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings or clearance of the Site) and "commence" shall be interpreted in accordance with this definition

"Development"	the development permitted by the Planning Permission
"Director"	the Council's Strategic Director and Chief Planner or other officers of the Council acting under his hand
"Original Permission"	the planning permission granted on 6 April 2004 under reference No. 20040221 for the erection of a Butchery Unit
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Site"	the land at Jordan Green Farm Jordan Lane Whitwell Reepham Norfolk NR10 4RQ shown for the purposes of identification only coloured red on the Plan

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement
- (iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or

without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument

- (iv) headings in this Agreement shall not form part of or affect its construction

#### W H E R E A S:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated
- B. The Owners are the freehold owners of the Site and the Mortgagee has a charge over the Site and the Owners are the freehold owners of the land over which the Original Permission is granted and the Mortgagee has a charge over that land
- C. The Original Permission has not been implemented
- D. The Owner's agents have submitted the Application
- E. The Council have resolved to approve the Application subject to the completion of this Agreement
- F. The Mortgagee has agreed to be a party to this Agreement for the purpose of giving consent as hereinafter appears

#### 2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers

- 2.2 The obligations of the Owners hereunder are planning obligations enforceable by the Council against the Owners and their respective successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with his interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement
- 2.5 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.
- 2.6 This Agreement shall cease to have effect if:
- 2.6.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.6.2 the Planning Permission shall expire prior to the Commencement Date
- 2.7 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges





Ordnance  
Survey

BROADLAND COUNCIL

23 APR 2007

PLANNING CONTROL

Siteplan® 1:2500

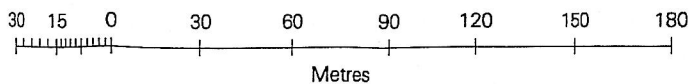
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Centre Coordinates: 606902 321755

National Grid sheet reference at centre  
of this Siteplan: TG0621

Supplied by: Trident Maps Ltd  
Serial Number: 01284500

### 3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

#### 3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement

#### 3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

#### 3.3 No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owners in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

### 4. NOTICES

#### 4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

- 4.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	The Strategic Director and Chief Planner Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Owners	P Lilwall and S Lilwall Jordan Green Farm Jordan Lane Whitwell Reepham Norfolk NR10 4RQ
The Mortgagees	The Agricultural Mortgage Corporation Limited Charlton Place Charlton Road Andover Hampshire SP10 1RE

- 4.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

## 5. THIRD PARTIES

- 5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

## 6. COSTS

- 6.1 The Owners shall on completion of this Agreement pay the Council's legal and administrative costs incurred in the preparation negotiation and completion of this Agreement



## 7. JURISDICTION

- 7.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

8. The Owners agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Agreement are hereby waived

## 9. DISPUTE RESOLUTION

- 9.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 9.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution.
- 9.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Royal Town Planning Institute who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.
- 9.4 Nothing in Clauses 9.1 and 9.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

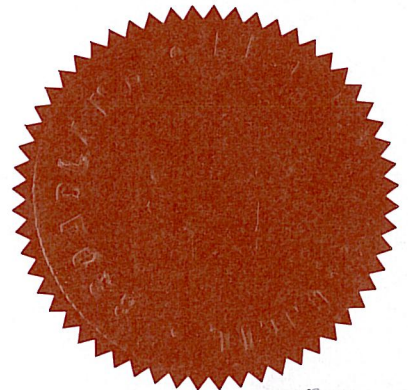
10. PLANNING OBLIGATIONS

The Owners hereby jointly and severally covenant with the Council as follows:

- 10.1 not to implement or permit the implementation of the development permitted by the Original Permission or any part thereof
- 10.2 not to make any claim against the Council including a claim for compensation arising out of the non-implementation of the Original Permission or any part thereof or any provision of this Agreement

EXECUTED by the parties hereto as a deed on the date written above

THE COMMON SEAL of  
BROADLAND DISTRICT COUNCIL  
was hereunto affixed  
in the presence of:



5907

Head of Corporate Services  
and Monitoring Officer

SIGNED by the said  
PETER RICHARD LILWALL  
in the presence of:

*P. Lilwall*  
*M. Parfitt*

SIGNED by the said  
SUSAN JOY LILWALL  
in the presence of:

*S. J. Lilwall*  
*M. Parfitt*  
*Cynwedd*  
*Foxay,*  
*Norfolk.*  
*Housewife*

SIGNED AND DELIVERED as a Deed

By

Barry Graham Greenaway

As Attorney and for The Agricultural Mortgage

Corporation PLC

In the presence of:-

MICHAEL PHILIP COWELL  
Charlton Place  
Charlton Road  
Andover  
Hampshire SP10 1RE

988213

~~LIMITED~~

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